90-778

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1990

John A. Kraemer, Petitioner

v

Patrick J. Spellacy and University of Minnesota,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT
PETITION FOR WRIT OF CERTIORARI

John A. Kraemer
Pro-se Petitioner
1410 Riverview Drive
Stillwater, MN 55082
1-612-439-4350

Questions Presented

-Can the petitioner, a non probationary status government employee, be denied by the respondent employer the right to age discrimination and termination grievance hearings required by employer Civil Service Rules that had been timely and repeatedly requested by the petitoner employee, the very unresolved issues that became the basis for consequent suit?

-Do the due process, equal access and protection provisions of the Constitution provide non probationary status government employees the right to consequent Court hearing and trial on the issues of age discrimination and consequent termination denied by the government employer?

-Can respondent initiated summary hearing be conducted and concluded prior to and without resolution of the plaintiff initiated expedited motion to compell defendant release of the statute defined and defendant interpreted personnel file of the plaintiff?

Questions Presented

-Can timely pro-se petitioner request for Court of Appeals oral argument be rejected without notice and right of reclassification?

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No._____

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT

Opinions Below

The opinion of the Eighth Circuit Court of Appeals is reported as docket no. 90-5079MN and is printed in Appendix A, page A1 and A2. The opinion of the Eighth District Court is reported as CIV 3-89-530. The District Court retains all court records and has been requested to certify and transfer by separate mailing all records to the Supreme Court.

Jurisdiction

The judgment of the Eighth Circuit Court of Appeals was entered on July 19, 1990. A timely petition for rehearing and suggestion for rehearing en banc was denied on August 28, 1990. The jurisdiction of the Court is invoked under 28 USCS & 1254 and 28 USCS & 1651.

Law Involved

The respondent is claimed to have violated the Fifth Constitutional Amendment provision that " no person shall.... be deprived of property without due process of law," the Fourteenth Constitutional Amendment provision that " nor shall any state deprive any person of.... property without due process of law" and the First Constitutional Amendment right "to petition the government for redress of grievances." Also civil rights standards of 28 USCS & 1252 related to issues of suit not considered in the District Court summary dismissal hearing were violated. Procedure Rule 10 of the Federal Rules of Appellate Procedures concerning notification of rejection for requested oral argument is considered to have been

overlooked by the Court.

Statement of Case

The petitioner employee formally requested an age discrimination grievance hearing in timely compliance with respondent employer contractual grievance procedures (age discrimination grievance filing June 5, 1986- immediately before suspension) concerning alleged misuse of an unapproved and allegedly biased performance appraisal criteria (eg. a professional appearance standard and inconsistent mathematical rounding of numerical performance ratings). Thereafter the petitioner was terminated and despite incessant requests for internal grievance hearings, an age discrimination hearing was never held and a termination hearing was conducted but without the petitioner. Thereafter the petitioner filed a charge of age discrimination and retaliation with the EEOC and then filed suit with the District Court prior to the 2 year deadline.

A summary dismissal hearing was conducted without petitioner requested interrogatory and document discovery and prior to order and

When the District Court order was appealed within specified time constraints, the pro-se petitioner request for oral argument was denied without required notice.

Reasons for Granting Writ

The underlying and fundamental material fact issue of suit is that the petitioner was never provided the due process right to internal grievance hearing resolution of petitioner age discrimination and termination grievances.

The pro-se petitoner had no knowledge of the repondent advocated EEOC rule 29 U.S.C. & 626 and no perception that the inducement to file an age discrimination charge with the EEOC could effectively preclude the petitioner from being allowed hearing and trial on the age discrimination and retailation issues of suit . A procedural timeliness rule unknown to the pro-se petitioner should not preclude a constitutional right, particularly when there was respondent intransegence to deny requested

hearings and prevent production of petitioner requested discovery.

The cause of petitioner action of filing suit was the consequence of the conscious effort of the respondent employer to deprive the petitioner of the rights and privileges of due process, equal access and protection under the Constitution while acting under the color of state law. The rights of and risk to all public employees are dramatically impacted when pro-se petitioners are denied grievance hearing, consequent court hearing and trial on the issue of suit, and oral argument notice and opportunity for reclassification as required by the Federal Rules of Appellate Procedure. The absence of case law history (reference:Table of Authority) identifies the relevance and precedent value of the issue of the denial of government grievance hearing further amplified with denial of discovery and the consequent perceptions and conclusions.

Conclusion

For the foregoing reasons, this petition of a writ of certiorari should be granted.

Respectfully submitted,

Pro-se Petitioner
John A. Kraemer
1410 Riverview Drive
Stillwater, MN 55082
1-612-439-4350

APPENDIX A1

Appeal from the United States

District Court for the District of Minnesota

No 90-5079

Submitted: July 13, 1990

Filed: July 19, 1990

(Retyped Copy)

Before ARNOLD, BOWMAN AND MAGILL, Circuit Judges.

John A. Kraemer appeals from an order of the District Court(1) granting summary judgment to the University of Minnesota and Patrick J. Spellacy in Kraemer's age discrimination and retaliation under the Age Discrimination in Employment Act (ADEA). We affirm. Kraemer, an auditor with the University of Minnesota, was suspended from his position for three days on June 5, 1986, and was terminated on April 30, 1987, for unsatisfactory performance. On February 22, 1988 h e filed an internal grievance with the University, and on January 12, 1989, he filed a charge of age discrimination with the Equal

Employment Opportunity Commission. After the EEOC issued Kraemer a right-to-sue letter, Kraemer filed this action in District Court against the university and Spellacy, Kraemer's supervisor. The District Court granted defendants' motion for summary judgment, concluding Kraemer failed to file a timely charge with the Equal Employment Opportunity Commission and failed to present sufficient evidence to support equitable tolling.

We have carefully reviewed the record and conclude Kraemer has not presented sufficient evidence of positive misconduct by the appellees to justify eqitable tolling. See Heideman v. PFL, Inc., No. 89-1645, slip op. at 7 (8th Cir. June 5, 1990). Accordingly, we affirm. See 8th Cir. R. 47B

(1) The Honorable Donald D. Alsop, Chief Judge, United States District Court for the District of Minnesota